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RE: SECTION 5a APPLICATION NO. 46 (SUB NO. 20)

**SUMMARY OF ORAL ARGUMENT POINTS FOR
ROCKY MOUNTAIN TARIFF BUREAU, INC. AND EC-MAC MOTOR CARRIERS
SERVICE ASSOCIATION, INC.**



Rocky Mountain Tariff Bureau, Inc. and EC-MAC Motor Carriers Service Assn., Inc.

(“Bureaus”) set forth below a summary of key points that they intend to raise at the October 27, 2004 oral argument.

1. **SMC Seeks Broadened Antitrust Immunity For its Own Commercial Benefit, Not the Public Interest.** Bureaus do not question the value to motor carrier pricing of class rate baselines, which serve as a benchmark from which competitive discounts are negotiated by carriers and shippers. But SMC’s goal here is to use the expanded collective ratemaking immunity it seeks under 49 U.S.C. § 13703 to advance its commercial product, CzarLite, as the primary nationwide class rate benchmark. That goal furthers no legitimate public policy, but instead furthers only SMC’s own commercial interests.

As SMC frequently points out, one of the most important rate baselines used *nationwide* today is SMC’s CzarLite product. We understand that this product is a compilation of rates that are collectively made by SMC for its ratemaking territory and rates collectively made by other bureaus for their respective territories. SMC sells CzarLite to carriers and shippers, and likely makes a handsome profit in doing so.

SMC wants expanded antitrust immunity so that this commercial compilation does not have to rely on rates made by other rate bureaus. In other words, SMC wants to be able to adjust the CzarLite rates collectively on a nationwide basis -- to make CzarLite into a product that sets forth only rates that would be collectively made by SMC and simultaneously and uniformly adjusted by SMC carriers between any two points in the U.S. SMC thus wants expanded

antitrust immunity in order to have exclusive control over the rates in CzarLite. It also wants to avoid the burdens and “inconvenience” that arise from the fact that other bureaus whose rates are compiled in CzarLite might not generally adjust their rates at the exactly the same percentage as SMC might have done, or might not adjust their rates at exactly the same time.

It would be inappropriate for this Board to grant SMC expanded antitrust immunity in order to enable SMC to enhance its CzarLite product or profits. Doing so would be contrary to the well-settled doctrine that immunities from the antitrust laws are to be narrowly construed and granted only to advance an important public – not private or commercial – interest.

2. **A Reduction in the Number of Baseline Rates Would Not Serve the Public Interest.** SMC’s filings in this proceeding repeatedly assert that there are too many rate bases or benchmarks in use today, resulting in what SMC claims is confusion and complications in the trucking marketplace. SMC witnesses refer to a “plethora of rate bases” and the alleged problems that this multiplicity of baseline rates creates for the process of pricing motor carrier services. The solution, SMC urges, is to grant nationwide antitrust immunity so that SMC carriers can establish a collectively-made set of baseline rates that they would promote to replace the numerous baselines in use today.

The applicable statute demands that immunity may be conferred only where there is a clear showing that doing so is in the public interest. SMC’s risky proposal to reduce the number of baseline rates available for carriers and shippers will not enhance the public interest, which is best served by the existing multiplicity of rate options. The proposal thus does not warrant approval and the antitrust immunity that follows from such approval.

3. **The Market is Functioning Competitively.** The “problem” of too many rates that SMC has set out to solve is not a problem at all, but a reflection of a highly diverse and

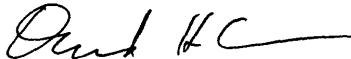
competitive marketplace that is working just fine. SMC offers no proof at all of market failure; the competitiveness and general health of the motor carrier industry are undisputed.

In fact, this case has nothing to do with the right or the ability of any carrier to price whatever service it wants to offer between any two points, and to assess its costs and competitive factors in doing so. That ability is not in question or doubt, and will not be enhanced by broadened immunity. Neither is SMC's ability to continue to publish and market CzarLite on a nationwide basis in doubt. SMC carriers thus do not need expanded immunity to set whatever price they want, or use CzarLite or whatever benchmark rate they want, anywhere in the U.S.

4. **SMC's Claim that its Members Operate Beyond the SMC Territory is Irrelevant.** SMC long has been populated by carriers with significant operations outside the SMC ratemaking territory – it used to call them “participating” carriers and now it calls them “members.” These carriers can now, as for decades past, use CzarLite as a benchmark on a nationwide basis, or use their own rates stated in tariffs many of them publish themselves as benchmarks or use rates published by SMC or some other rate bureau as a benchmark. They don't need expanded antitrust immunity to competitively price their services through discounts that they negotiate on specific traffic.

In short, SMC has not met its high burden of showing a *public* interest for broadened immunity, and its application for expanded antitrust immunity should be denied.

Respectfully submitted,

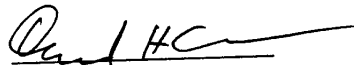


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CERTIFICATE OF SERVICE

I hereby certify that I have this 20th day of October, 2004 served a copy of the foregoing Oral Argument Summary on all parties of record by first class mail, postage prepaid.


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